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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

September 5, 1995

VIA HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

Re: **Ex Parte Presentation in MM Docket No. 92-260**

I am submitting the original and one copy of this memorandum summarizing ex parte presentations to Lisa Smith, Richard Welch, John Nakahata, Richard Chessen, Gregory Vogt, Jennifer Burton, Larry Walke and Lynn Crakes on Tuesday, August 29, 1995, with respect to the petitions for reconsideration pending in Implementation Of The Cable Television Consumer Protection And Competition Act Of 1992 (Cable Home Wiring), MM Docket No. 92-260.

Sincerely,

Deborah C. Costlow

Deborah C. Costlow

DCC:mtk

Enclosure

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MEMORANDUM

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

TO: **William F. Caton**

FROM: **Deborah C. Costlow**

DATE: **September 5, 1995**

RE: **Ex Parte Presentation In MM Docket No. 92-260**

The following summarizes ex parte presentations to Lisa Smith, Richard Welch, John Nakahata, Richard Chessen, Gregory Vogt, Jennifer Burton, Larry Walke and Lynn Crakes on Tuesday, August 29, 1995, with respect to the petitions for reconsideration pending in Implementation Of The Cable Television Consumer Protection And Competition Act Of 1992 (Cable Home Wiring), MM Docket No. 92-260. The presentations were on behalf of American Telecasting, Incorporated, the largest MMDS operator in the United States. Meeting participants included myself, John Suranyi, Paul Beckelheimer, Kevin McKnight, Mark Simmons, Lee Haglund and Alan Fishel.

The presentations focused on the following two proposed modifications to the home wiring regulations: (1) the demarcation point in multiple dwelling units (MDUs) should be located at the point where the wire is solely dedicated to an individual residential unit as opposed to 12 inches outside of where the wiring enters the subscriber's dwelling unit; and (2) the MDU owner, and not the tenant, should have the option to purchase and control the disposition of that dedicated wire.

These modifications would greatly enhance competition among providers seeking to service MDUs. Under the current rules, competitors to franchised cable operators are virtually precluded from competing with, or replacing, franchised cable operators at MDUs. Understandably, virtually all MDU owners refuse to allow a second set of cable wires on their properties, which construction raises not only significant aesthetic concerns but also entails risk of damage to the property. Therefore, MDU owners generally insist that a competitor to a franchised cable operator cannot service the property unless the competitor uses the wiring currently on the property. The franchised operator, however, even though it has no long term contract or easement to protect its interest, will invariably claim that it owns the wiring on the property and threaten to sue the MDU owner and the competitor for conversion and tortious interference with prospective economic advantage if the MDU owner allows the competitor to use the wiring. Often the issue of who owns the wiring is unclear, and therefore the MDU owner, faced with the prospect of becoming embroiled in a highly expensive and visible law suit, backs down and allows the franchised operator to retain exclusive access to the property via the sole use of the wiring.

If the modifications proposed above are adopted, the MDU owner will then have the option of purchasing the wiring from the franchised cable operator and allowing the competitor to compete with the franchised operator on the property or for access to the property. The FCC thus will be giving tenants throughout the country who never had a choice of video service providers their first opportunity to select among providers. This is especially important for less wealthy tenants who cannot afford the prices charged by the franchised operators for the programming they want, but who can afford the lower rates often charged by competitors to the franchised operators. Moreover, these proposed modifications will even benefit the tenants of MDU owners who decide to give exclusive access to one provider, because the decision of which provider to select will then be based upon factors that are important to tenants such as price, quality of service, and channel selection, instead of factors that are unimportant to the tenants, such as the MDU owners' fear of being dragged into a lawsuit.

The FCC must adopt both proposed modifications to obtain the competitive advantages these modifications would produce. If the FCC adopted just the first modification (moving the demarcation point), the MDU owners would still be faced with the prospect of a lawsuit whenever they wanted the competitor to use the wiring because only the tenants would have a right to purchase the wiring, and they would only have the right to purchase the wiring for their individual unit. In any event, tenants almost never purchase the wiring because they cannot remove such wiring or even if removable, use the wiring at their next residence. Indeed, their new residence typically will already have wiring installed. Requiring tenant purchase both results in a tenant having to repeatedly buy wires as the tenant moves from MDU to MDU in order for the tenant to receive competing services, and leaves a competitor without any system for tracking whether the wire within a particular individual unit has actually been purchased by a previous tenant and thus abandoned upon move out.

If the FCC adopts just the second modification (allowing the MDU owners the right to purchase the wiring from the point of the television receiver to about 12 inches outside where the wiring enters the tenant's dwelling unit), the MDU owners would still face the same predicament they currently confront. In that event, they would still need to obtain control over the wiring up to the point where the wire is solely dedicated to an individual residential unit, and thus risk a lawsuit if they allow the franchised operator's competitor to use that wiring.

There are no disadvantages to adopting the proposed modifications. Under these modifications, franchised cable operators will not be unfairly treated. In fact, they will be paid for the value of the wiring regardless of whether they even owned it. Moreover, given that franchised operators at MDUs ordinarily recoup the costs of any wiring that they installed within the first four or five months of service, most operators will have recouped their investment at least twenty to thirty-fold.

There is also no merit to the argument that franchised operators will be unfairly disadvantaged because they had hoped to someday transfer data or voice over the wiring that would now be purchased by the MDU owners. This argument represents the quintessential "red herring". The franchised operators do not currently have the right to transfer voice or data over the wiring at MDUs. Moreover, the purchase of the wiring by the MDU owners will not foreclose the franchised operators from seeking to obtain that right. In short, regardless of whether the franchised operators or the MDU owners own the wiring, to someday obtain the right to carry voice or data over the wiring, the franchised operators will also need to gain the permission of the MDU owners.

Similarly, there is no merit to the contention that the rules should remain unaltered because each video service provider will need its own wiring at MDUs once voice and data are also transmitted by the providers. Contrary to certain representations we understand were made to the FCC by others, a wire can carry video from one provider, voice from a second provider, and data from a third provider. Thus, it will not be necessary for each provider to have its own wire, and a tenant will be able to obtain video, voice and data from three different providers using the same wire.